

# **6 FAH-2 H-120 THE ACQUISITION ENVIRONMENT**

*(TL: CORH-1; 08-21-1997)*

## **6 FAH-2 H-121 KEY PRINCIPLES AND PRACTICES**

*(TL: CORH-1; 08-21-1997)*

*(State Only)*

a. When the U.S. Government acts as a customer or buyer, it must operate within constraints and guidelines that often do not apply to other buyers. U.S. Government entities are responsible for spending public funds in the public interest, and must act in accordance with that responsibility.

b. While contracting personnel bear direct responsibility for compliance with controls on U.S. Government acquisition, program managers' activities often are critical as well. The ability to obtain broad competition often depends, for example, on the requirements office's development of a work statement that is not unnecessarily restrictive. Its ability to justify award decisions depends largely on whether requirements office personnel have played their part in developing sound criteria on which to judge the competitors. This system of separating the duties of the contracting activity and the requirements office provides for a system of checks and balances for better overall control of the acquisition process.

## **6 FAH-2 H-122 THE REGULATIONS**

### **6 FAH-2 H-122.1 The Federal Acquisition Regulation (FAR)**

*(TL: CORH-1; 08-21-1997)*

*(State Only)*

The Federal Acquisition Regulation, Code of Federal Regulations, Title 48, Chapter 1 (48 CFR Ch. 1), is the primary regulation for use by all Federal agencies when they acquire supplies or services with appropriated funds. It provides uniformity in the Federal acquisition process and its concise language, format, and numbering system make it easy to use and understand.

## **6 FAH-2 H-122.2 The Department of State Acquisition Regulation (DOSAR)**

*(TL: CORH-1; 08-21-1997)*  
*(State Only)*

Federal Departments and agencies are authorized to establish their own regulations to implement and supplement the FAR. Accordingly, the Department of State has established uniform policies and procedures in the Department of State Acquisition Regulation (DOSAR) (48 CFR Ch. 6 reproduced in 6 FAM 200 Appendix E ).

## **6 FAH-2 H-123 THE NATURE OF A CONTRACT**

*(TL: CORH-1; 08-21-1997)*  
*(State Only)*

a. A contract is an agreement between two or more parties consisting of a promise, or mutual promises, for breach of which the law gives a remedy, or the performance of which the law recognizes as a duty.

b. Unlike most social promises, a contract establishes a binding legal relationship that obligates the parties to keep their promises. In nearly all U.S. Government contracts, one party is the "seller", obligated by the contract to provide goods and services. The other party is the U.S. Government which, as the "buyer", is obligated to pay for those goods or services.

c. All contracts must contain the following elements:

- (1) **An offer:** A proposal by an offeror that a contract be entered into;
- (2) **An acceptance:** Assent to the offer by the other party, and communication of that assent to the offeror; and
- (3) **Consideration:** Things of value in the eyes of the law exchanged by the parties to bind the agreement.

d. In addition, a contract must have a lawful purpose, clarity of terms and conditions, and must be entered into by mentally and legally competent parties.

e. In a U.S. Government contract (other than purchase order or other simplified acquisition method contracts), the bids or proposals from the firms are the offers. Each is made by an offeror seeking to enter into a contract with the Government. When the Government, after bid opening or proposal review and negotiation, selects one bidder/offeror with whom to contract, it performs the act of acceptance when the Contracting Officer signs the contract.

f. The mutual consideration in U.S. Government contracts usually consists of:

- (1) The delivery of goods or services by the contractor; and
- (2) Payment by the Government.

g. The Statement of Work (see section H-340) or specifications must clearly communicate the Government's requirements, and shall always be in writing.

# 6 FAH-2 H-124 DEFINITIONS AND ACRONYMS

## 6 FAH-2 H-124.1 Definitions

(TL:CORH-1; 08-21-1997)  
(State Only)

- a. **Acceptance.** The act of an authorized representative of the U.S. Government acknowledging that the supplies or services are in conformity with the contract requirements.
- b. **Administrative Controls** Safeguards which ensure that contracting will be carried out in conformity with applicable regulations and Department policy.
- c. **Amendment.** Modification made to a solicitation.
- d. **Bidder's List** (Also called **Source List**). List of prospective contractors.
- e. **Cardinal Changes.** Modifications to an existing contract which are beyond the general scope of that contract and are so extensive that a new procurement should be used.
- f. **Changed Conditions.** Construction site/repair conditions which differ significantly from conditions indicated in the contract, or conditions ordinarily encountered in the performance of the type of work in the contract.
- g. **Change Order.** Unilateral action taken by the Contracting Officer in order to modify the drawings, designs, specifications, method of shipping or packing, place of inspection, delivery, or acceptance of an existing contract.
- h. **Competitive Range.** Those proposals, which, after evaluation by the TEP, have a reasonable chance of receiving the award, both from a technical and cost standpoint.
- i. **Contract.** A legal instrument providing for the purchase, lease or barter of property or services for the direct benefit of the U.S. Government.
- j. **Contract Administration.** The monitoring of the contractor's performance in order to assure compliance with performance requirements and contract provisions.
- k. **Contract Modification.** Any written alterations in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of an existing contract.
- l. **Contracting Officer.** An official authorized to enter into or administer procurement contracts and make related determinations and findings.
- m. **Contracting Officer's Representative (COR).** The individual in the requirements office who is responsible for the technical direction and evaluation of the contractor's performance.
- n. **Constructive Change Order.** Informal requests for additional work or services caused by some act or omission to act on the part of the U.S. Government which causes a contractor extra work, delays, or money.
- o. **Cost Estimate.** A written calculation of all items included in the scope of the work, tabulated under appropriate cost headings (direct costs, labor, overhead, and profit).

- p. **Cost-Reimbursement Contract.** Contract in which the buyer and seller agree on an estimate of contract costs. The buyer agrees to reimburse the seller for reasonable, allowable, and allocable costs necessary to complete the work.
- q. **Cure Notice.** A document the Contracting Officer sends to a contractor to notify the contractor that the contract may be terminated by reason of default if the condition endangering performance of the contract is not corrected in 10 days.
- r. **Determinations and Findings.** Written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions.
- s. **Excusable Time Delay.** Failure to perform which is beyond the control and without fault or negligence of the contractor.
- t. **Firm Fixed-Price Contract.** A contract that provides for a price which is not subject to any adjustment by reason of cost experience of the contractor in the performance of the contract.
- u. **Indefinite-Quantity Contract.** A contract used for procurements in which the exact number of deliverable items is not known at the time of contracting. The contract provides for a minimum and maximum amount of goods/services, which may be ordered under the contract.
- v. **Inspection.** The examination and testing of supplies and services to determine whether they conform to contract requirements.
- w. **Labor-Hour Contract.** A contract which provides for the procurement of property or services on the basis of direct labor-hours at specified, fixed hourly rates (which include direct and indirect labor, overhead, and profit).
- x. **Letter Contract.** A written authorization to begin work issued prior to the negotiation of a formal contract.
- y. **Level-of-Effort Contract.** A contract which specifies the number and type of person-hours, which the contractor will apply in pursuing the project.
- z. **Modification.** See Contract Modification, above.
- aa. **Negotiation.** The procedure for awarding contracts without sealed bidding. This method of procurement is used when sealed bidding is not feasible or practicable. Under negotiation, the lowest offeror does not necessarily receive the award, since technical and other factors are considered as well as cost.
- bb. **Requests for Proposals (RFP).** The U.S. Government's written solicitation to prospective offerors to submit a proposal based on the terms and conditions set forth therein. Proposal evaluation and contractor selection are based on the factors for award as stated in every competitive RFP.
- cc. **Responsible Bidder.** One who has the technical and financial capacity to secure the necessary resources to deliver the goods or services.
- dd. **Responsive Bid.** A bid which conforms exactly to the requirements in the Invitation for Bids (IFB).
- ee. **Sealed Bidding.** Acquisition by competitive sealed bids. This method of procurement requires that specifications be written describing the requirements of the U.S. Government clearly, accurately, and completely, so that the evaluation of bids can be based on the lowest bid submitted by a responsive and responsible bidder.

ff. **Show Cause Letter.** A document the Contracting Officer sends to a defaulting contractor to notify the contractor that the contract may be terminated by reason of default unless the contractor can prove in 10 days that the condition was not his or her fault.

gg. **Specifications.** Clear and accurate description of the technical requirements of a service or supply contract.

hh. **Statement of Work (SOW).** Written definition of work to be performed which establishes standards sought for the goods or services to be supplied.

ii. **Technical Evaluation Panel (TEP).** One or more technical staff members designated by the requirements office to evaluate technical proposals, discuss the work with all offerors, and prepare a selection recommendation.

jj. **Termination for Convenience.** A contract clause designed to give the U.S. Government a unilateral right to terminate the contract when it no longer needs or requires the products or services.

kk. **Termination for Default.** A contract clause which allows the Government to terminate a contract when the contractor fails to perform or fails to make progress so as to endanger performance.

ll. **Time-and-Materials Contract.** A contract that provides for payment of supplies and services on the basis of incurred direct labor hours (at fixed rates) and materials (at cost).

mm. **Time Delay.** An interruption during which services, supplies, or work are not delivered in accordance with the performance time schedule stated in the contract.

## 6 FAH-2 H-124.2 Acronyms

(TL: CORH-1; 08-21-1997)

(State Only)

<b>A/OPE</b>	Office of the Procurement Executive
<b>A/OPR/ACQ</b>	Office of Acquisitions
<b>A/SDBU</b>	Office of Small and Disadvantaged Business Utilization
<b>ASBCA</b>	Armed Services Board of Contract Appeals
<b>BAFO or BFO</b>	Best and Final Offer
<b>BPA</b>	Blanket Purchase Agreement
<b>CBD</b>	<i>Commerce Business Daily</i>
<b>CFR</b>	<i>Code of Federal Regulations</i>
<b>CG</b>	Comptroller General
<b>CICA</b>	Competition in Contracting Act
<b>CO</b>	Contracting Officer
<b>COR</b>	Contracting Officer's Representative

<b>CR</b>	Cost-Reimbursement Contract
<b>D&amp;F</b>	Determination and Findings
<b>DOSAR</b>	Department of State Acquisition Regulation
<b>FAH</b>	<i>Foreign Affairs Handbook</i>
<b>FAM</b>	<i>Foreign Affairs Manual</i>
<b>FAR</b>	Federal Acquisition Regulation
<b>FFP</b>	Firm-Fixed-Price Contract
<b>FMO</b>	Financial Management Officer
<b>FMP</b>	Bureau of Finance and Management Policy
<b>FOIA</b>	Freedom of Information Act
<b>FSI</b>	Foreign Service Institute
<b>FSN</b>	Foreign Service National
<b>GAO</b>	General Accounting Office
<b>GFP</b>	Government Furnished Property
<b>HCA</b>	Head of the Contracting Activity
<b>IFB</b>	Invitation for Bids
<b>L/BA</b>	Office of the Legal Advisor, Building and Acquisitions
<b>OFPP</b>	Office of Federal Procurement Policy
<b>OIG</b>	Office of the Inspector General
<b>OMB</b>	Office of Management and Budget
<b>PSC</b>	Personal Services Contract
<b>RFP</b>	Request for Proposals
<b>SBA</b>	Small Business Administration
<b>SF</b>	Standard Form
<b>SOW</b>	Statement of Work
<b>T for C</b>	Termination for Convenience
<b>T for D</b>	Termination for Default
<b>TEP</b>	Technical Evaluation Panel
<b>UCF</b>	Uniform Contract Format

USC

United States Code

## **6 FAH-2 H-125 THROUGH H-129 UNASSIGNED**